

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

BRUCE CATON,	)	
	)	
Plaintiff,	)	4:05CV3291
	)	
v.	)	
	)	
MIKE WILSON, et al.,	)	MEMORANDUM AND ORDER
	)	
Defendants.	)	
_____	)	

This matter is before the Court on plaintiff's second motion to withdraw case (Filing No. 8). Mr. Caton's original motion to withdraw his complaint and voluntarily dismiss the above-entitled case (Filing No. 6) essentially crossed in the mail with the Court's prisoner payment order (Filing No. 5). In the absence of a prisoner payment order, the plaintiff's institution would not have been directed to collect the \$250 filing fee from the plaintiff's inmate trust account, and the plaintiff's case would have been dismissed without any consequences.

The plaintiff diligently attempted to terminate this litigation at the earliest opportunity. Under the circumstances, the Court will grant plaintiff's second motion to withdraw case. Accordingly,

IT IS ORDERED:

1) The Court's prior prisoner payment order (Filing No. 5), is vacated.

2) Plaintiff's motion for leave to proceed in forma pauperis (Filing No. 2) is denied nunc pro tunc. The vacated prisoner payment order in this case is now null and void and may no longer be used as authority for withdrawal of funds from the plaintiff's institutional trust account. The Clerk of Court shall send a copy of this order to the financial officer for the plaintiff's institution.

3) This action is dismissed without prejudice.

DATED this 11th day of January, 2006.

BY THE COURT:

/s/ Lyle E. Strom

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LYLE E. STROM, Senior Judge  
United States District Court